IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 18857 of 2007(T)

OS.399/2007 of PRL.M.C.,ERNAKULAM

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PETITIONER:

MARY JOSEPH, AGED 67 YEARS,
W/O.LATE JOSEPH, KADEPARAMBIL HOUSE,
PONNARIMANGALAM P.O., MULAVUKAD VILLAGE,
KANAYANOOR TALUK, RESIDES RELATIVE'S HOUSE,
CHALAKUDY.

BY ADV. SRI.A.L.GEORGE

RESPONDENTS:

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1. ANTONY,
AGED 64 YEARS, S/O.LATE LONAN, KADEPARAMBIL HOUSE,
PONNARIMANGALAM P.O., MULAVUKAD,
KANAYANNOOR TALUK, ERNAKULAM DISTRICT.

2. CLARA GEORGE,
AGED 48 YEARS, W/O.GEORGE, KADEPARAMBIL HOUSE,
PONNARIMANGALAM, MULAVUKAD P.O., KANAYANNOOR TALUK
ERNAKULAM DISTRICT.

3. THRESSIA PAILY,
AGED 75 YEARS, KADEPARAMBIL, PONNARIMANGALAM,
MULAVUKAD P.O., KANAYANNOOR TALUK,
ERNAKULAM DISTRICT.

4. CELIN VARGHESE,
AGED 71 YEARS, W/O.VARGHESE, KAEPARAMBIL,
PONNARIMANGALAM, MULAVUKAD P.O., KANAYANNOOR TALUK
ERNAKULAM DISTRICT.

5. K.L.SEBASTIAN,
AGED 68 YEARS, S/O LATE LONAN,
KADEPARAMBIL HOUSE, MARTINPURAM, MARADU P.O.,
MARADU VILLAGE, KANAYANNOOR TALUK.

6. MARTHA NARAYANAN,
AGED 62 YEARS, SHARON VILLA,
KANNADIKKADU, MARADU VILLAGE,
KANAYANNOOR TALUK.

7. MARY GEORGE,
AGED 59 YEARS, W/O.GEORGE,
KADEPARAMBIL, PONNARIMANGALAM, MULAVUKAD P.O.,
KANAYANNOOR TALUK, ERNAKULAM DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

WP(C).No. 18857 OF 2007 T

Dated this the 20th June, 2007.

JUDGMENT

This writ petition is filed seeking a direction to dismiss O.S.399/07 before the Munsiff's Court, Ernakulam. It is the case of the petitioner that the property belonging to the two brothers by virtue of two assignment deeds and one of them died and thereafter a suit for partition has been filed as O.S.575/03 and that has ended in the passing of a preliminary decree thereby declaring right of the parties. When such a decree is there and it is binding, a suit is filed as O.S.399/07 for injunction which is not at all maintainable. Therefore the writ petitioner seeks to dismiss that suit. If there is a valid decree binding between the parties and on account of the same the suit filed subsequently is not maintainable, it is a matter that has to be considered by the court in which O.S.399/07 is pending. Therefore the learned Munsiff, Ernakulam is directed to consider the maintainability of O.S.399/07 as a preliminary issue and dispose of the matter in accordance with law, after hearing both sides. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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